

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Andres Sosa,

Complainant

against

Docket # FIC 2020-0008

Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,

Respondents

January 27, 2021

The above-captioned matter was heard as a contested case on October 20, 2020, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by Inmate Request Form dated November 7, 2019, the complainant requested that the respondents provide him with a copy of "the #125-Cheshire C.I. Job Vacancy List."
3. It is found that on or about December 26, 2019, the complainant received records responsive to the November 7, 2019 request. It is further found that certain information was redacted from those records prior to disclosure to the complainant.
4. By letter of complaint dated December 30, 2019² and filed January 6, 2020, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the

Information (“FOI”) Act by denying his request for certain public records. Specifically, the complainant objected to the respondents withholding the information identified in paragraph 3, above.

5. Section 1-200(5), G.S., provides:

“Public records or files” means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides, in relevant part:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours ... (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), and 1-212(a), G.S.

9. During the hearing, the respondents contended that the following three (3) categories of information had been withheld pursuant to Conn. Gen. Stat. §1-210(b)(18): facility job code, work detail, and pay range. The respondents contend that Conn. Gen. Stat. §1-210(b)(18) provides a basis for withholding the requested information in that disclosure would identify the location of inmates and would result in a safety risk and disorder in the correctional facility.

10. The complainant disputed such contention with respect to work detail, testifying that he seeks this information so that he may pursue employment opportunities within the facility, and that on at least two prior occasions the respondents have provided him with this information. The complainant did not object to the respondents withholding the facility job code or pay range information. Consequently, such will not be further addressed herein.

11. Upon order of the hearing officer, the respondents submitted to the Commission for an in camera inspection an unredacted copy of the records for which portions are claimed exempt

Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

from disclosure. Such records were submitted by the respondents on November 24, 2020 and are hereinafter described as IC-2020-0008-1 through 2020-0008-7. The respondents identified “work detail” as exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.

12. Section 1-210(b)(18), G.S., provides, in relevant part, that disclosure is not required of “[r]ecords, the disclosure of which the Commissioner of Correction . . . has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction. . . .” Section 1-210(b)(18)(G), G.S., specifically provides that disclosure is not required of “[l]ogs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities.”

13. The Commission’s role in reviewing the DOC Commissioner’s safety risk determination under Conn. Gen. Stat. §1-210(b)(18) is to determine “whether the [commissioner’s] reasons were pretextual and not bona fide, or irrational.” Comm’r v. Freedom of Info. Comm’n, 46 Conn. L. Rptr. 533, 2008 WL 4926910, at *5 (Conn. Sup. Ct. Nov. 3, 2008).

14. Based on the credible testimony of the respondents’ FOI Administrator, Counselor Supervisor Anthony Campanelli, and a careful, in camera review, it is found that the work detail sought to be disclosed consists of information about inmate location and movement within the correctional facility, including how many inmates may be in a location at a given time. It is further found that the respondent Commissioner has reasonable grounds to believe that disclosure of such information may result in a safety risk or risk of harm to those in the facility, and that disclosure could result in disorder within the facility. It is further found that the reasons given by the respondents are not bona fide, and not pretextual, or irrational.

15. At the hearing, the complainant contended that on at least two prior occasions, the respondents provided him with the work detail information requested and therefore the Commission should order disclosure. However, a public agency does not waive its right to assert a permissive exemption under the FOI Act, even where information may have been previously disclosed. Furthermore, the respondents’ witness credibly testified that such information should not be disclosed for the reasons set forth herein, and that he would reinforce that with the respondents’ FOI liaisons in the future.

16. Accordingly, it is concluded that the work detail information requested is permissibly exempt from disclosure pursuant to Conn. Gen. Stat. §1-210(b)(18)(G), G.S., and that the respondents did not violate the FOI Act as alleged in the complaint.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 27, 2021.


Cynthia A. Cannata

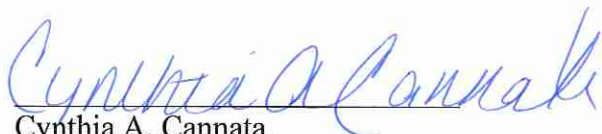
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

ANDRES SOSA, #260589, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION;
AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, c/o Attorney
Tracie C. Brown, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission